

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

DEBORAH M. CAMPBELL,
Plaintiff,

Civ. No. 04-943-CO

ORDER

v.

JOANNE B. BARNHART,
Commissioner, Social Security
Administration,

Defendant.

AIKEN, Judge:

On August 12, 2005, Magistrate Judge Cooney filed his Findings and Recommendation, finding that the Commissioner's decision to deny disability benefits was not supported by substantial evidence in the record and recommending that the Commissioner's decision be reversed and remanded for further proceedings. The matter is now before me. See 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b).

When either party objects to any portion of a magistrate judge's Findings and Recommendation, the district court must make a de novo determination of that portion of the magistrate judge's report. See 28 U.S.C. § 636(b)(1); McDonnell Douglas Corp. v. Commodore Business Machines, Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Plaintiff filed timely objections to the Findings and Recommendation. I have, therefore, given de novo review of Magistrate Judge Cooney's rulings.

Plaintiff alleges disability due to knee impairments. The ALJ found that plaintiff did not have a "severe" impairment within the meaning of the Act as of September 30, 1997, her last insured date. See 20 C.F.R. § 404.1520(c) In so finding, the ALJ rejected the testimony of plaintiff as not credible. Tr. 49.

Magistrate Judge Cooney found that the ALJ erred by not considering the opinion of Dr. Carr, who rendered an opinion regarding plaintiff's condition in September of 1997. Judge Cooney found that outstanding issues remained as to whether Dr. Carr's testimony established the existence of a severe impairment and remanded the case for further proceedings. Although Magistrate Judge Cooney did not explicitly discuss the ALJ's credibility finding, he found that the record supported the ALJ's finding that her testimony did not support a "severe" impairment. Findings and Recommendation, pp. 10-11. Thus, Magistrate Judge Cooney found no error in the ALJ's credibility finding. I, too, find no error.

The record reflects that plaintiff continued to walk, bike, bowl, and roller-skate in September and October of 1997. Tr. 45, 307. In July of 1998, several months after her last insured date, plaintiff reported that she "was playing in the river with her kids on an innertube yesterday when she flipped over on the innertube and hit the back of her head on a rock." Tr. 515. While plaintiff maintains that the ALJ misconstrues this evidence, the ALJ's interpretation of such evidence is reasonable and supported by substantial evidence in the record.

Regardless, remand for benefits would be inappropriate in any event, because the ALJ made no findings at steps four and five of the sequential evaluation process regarding plaintiff's residual functional capacity and her ability to perform work activity. 20 C.F.R. §§ 404.1520(e), (f); Social Security Regulation (SSR) 96-8p.

Accordingly, IT IS HEREBY ORDERED that Magistrate Judge Cooney's Findings and Recommendation (doc. 15) filed August 12, 2005 is ADOPTED, and the decision of the Commissioner is REVERSED and REMANDED for further proceedings.

IT IS SO ORDERED.

Dated this 30 day of September, 2005.

/s/ Ann Aiken
Ann Aiken
United States District Judge